IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2884 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M B SHUKLA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2884 of 1983

MR GIRISH PATEL for Petitioners No. 1-7,9-12,14-28,30-38,40-44

UNSERVED-EXPIRED (N) for Petitioners No. 8,13,39

RULE SERVED for Petitioners No. 29

MR MB GANDHI for Petitioners No. 45-46

M/S MG DOSHIT & CO for Respondents No. 1-2

Ms.Nandini Joshi AGP for Respondents No. 1-2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 25/10/2001

ORAL JUDGEMENT

#. Prof M.B.Shukla and other 43 petitioners have filed

this petition originally with a prayer that this court may quash and set aside the order dated 16.3.1983 passed by the Education Department, Government of Gujarat by which the Government has rejected the pay scale of Rs. 1200-1900 of Professors Class-1 to the petitioners in view of the Government Resolution dated 22.6.1982. The petitioners further prayed to direct the Secretary to Government of Gujarat, Education Department- respondent no.1 and the Director of Higher Education-respondent no.2 to extent to the petitioners the pay scale of Rs 1200-1900 from 1.1.1973 and to order fixation of salary of the petitioners in the said pay scale and further direct the respondents to pay to the petitioners arrears of difference in salary on that basis and further direct the respondents to consider the petitioners for future revisions as if the petitioners had been placed in the above pay scale and to grant to the petitioners properly revised pay scale even in future on that basis with all consequential benefits.

#. The facts leading to the present petition are as under:

2.1 All the 46 petitioners were working as Professors in different subjects such as Physics, Chemistry, Economics, English, Gujarati etc. All the petitioners hold Master's degrees in their respective subjects. 10 petitioners out of them hold Doctorate degrees in their subjects . Some of the petitioners joined as Jr. Lecturers in Class III cadre and were subsequently promoted as Senior Lecturers Class-II and then Professors Class-I . Others except Prof. S.B.Mehta were recruited as Sr.Lecturers in Class II and were subsequently promoted as Professors Class-I. Prof. S.B.Mehta was directly appointed as Professor in Class I.

2.2 All the petitioners were Professors of respective subjects in Class-I cadre as on 1.1.1973 and belong to the cadre of Professors in Gujarat Education Service Class-I cadre.

2.4 It has been stated that upto 1969 there were 3 cadres of teachers in Government Colleges as under:

1. Class I Professors
2. Class II Sr. Lecturers
3. Class-III Jr. Lecturers

2.5 With effect from 1969 the cadres of Sr.Lecturers and Jr.Lecturers were amalgamated into a merged cadre of Lecturers in Class-II. The said cadre of Class-II were created with effect from 1.4.1969.

2.6. The petitioners like other teachers in Government colleges were originally given the Sarela Pay scales. However, subsequently the Sarela pay scales were withdrawn and UGC pay scales were given to the petitioners with effect from 1.4.1966. The UGC pay scales were as under:

Principal	(i)	740-1100
	(ii)	800-1250
2. Professors	(i)	700-40-1100
	(ii)	400-30-640-40-800
3. Sr.Lecturers & Jr.Lecturers		300-25-600
4. Demonstrators/ Tutors		250-15-400

2.7. As per the Recruitment Rules, at the relevant time, Professors were appointed either by promotion on the basis of proved merit and efficiency from among Senior Lecturers possessing the necessary qualifications or by direct selection. For direct selection the qualifications required were:

(i) possessing a Bachelors degree in the First Class + a Doctorate with 2 years teaching experience in the affiliated college;

OR

(ii) A Master's degree in at least First Class with 2 years teaching experience;

(iii) A Bachelor's degree in at least Second Class + a Master's degree in the pass class or a Bachelor's degree in pass class with a Master's degree in Second class with 7 years teaching experience, of which at least 5 years experience must be at P.G.level.

Provided that preference will be given to

candidates with original research work to their credit

(G.N.E. & D No. SCP-1066-EH dated 15.9.66)

2.8. The petitioners further submit for Lecturers post the appointment is by direct selection or by promotion or persons of proved merit and efficiency who are serving in the lower cadre of the Gujarat Education Service Class-II or by direct selection. For direct selection the qualifications required are:

1. A Master's degree at least in the Second Class;

or

2. A Bachelor's degree at least in the Second Class and a Master's degree in pass class with 2 years teaching experience as a Tutor in the affiliated college.

G.N.E. & L.D/ No. SCP-1068-KH dated 30.4.69; and
G.N.E. & L.D. No. AT.1071-D dated 10.1.72)

2.9. It was further submitted that by Government Resolution dated 23.11.1976 the Government accepted the UGC Sen Commissions pay scales for Universities and colleges with effect from 1.1.1973 as under:

1.	Demonstrators/ Tutors	500-900
2.	Lecturers	700-40-1100-50-1300-Assessment 50-1600
3.	Principal	(i) 1200-1900 (ii) 1500-2200 to 10% of the total posts of Principal

2.10 Thus as per the Sen Commission's pay scales of Professors (Class-I) and Lecturers (Class II) were given the same pay scale known as running pay scale from 700-1600.

2.11 It was further submitted that the qualifications for Lecturer's post in colleges-(i) a consistently good academic record with first or high second class (B+) at Master's degree in a relevant subject or an equivalent degree of Foreign University and (ii) M.Phil degree or a recognized degree beyond the Master's level or published

work indicating the capacity for independent research work.

#. Mr. Girish Patel learned counsel for the petitioners submitted that the petitioners main grievances are two.

Contention No.1

3.1 The petitioners were Professors of Physics, Chemistry, Mathematics, English etc. in Government Arts, Science and Commerce Colleges and were always occupying a higher position in respect of status powers and pay scales as compared to the Lecturers of the same subjects in Government colleges. the petitioner Professors were equated and protected together with the Lecturers by offering the same pay scale of Rs. 700-1600.

#. In view of the above, Mr. Girish Patel learned counsel for the petitioners submitted that the grievance of the petitioners is that of discrimination between Professors and Lecturers in Government colleges Though the petitioners were appointed as Professors and were working as Professors after having been selected on the basis of the higher qualifications prescribed for Professors Class-I posts are sought to be bracketed with Lecturers Class-II posts who were appointed as per the Recruitment Rules prescribing lesser qualifications. The petitioners' submission is that by treating unequals equals Article 14 is violated.

4.1 The ld.counsel further submitted that the posts of Lecturers and Professors are different. He submitted that the qualifications for both the posts are different. He submitted that the Professors in Government Arts, Science and Commerce Colleges can become heads of departments, where the the lecturers cannot. He also submitted that the duties and responsibilities of Professors and Lecturers are also different. He also submitted that upto the year 1973 the pay scales were also different. He also submitted that the post of Professor is superior to Lecturer and if both of them are treated equally then it amounts to treating unequals equally and that is also violative of Article 14 of the Constitution of India. He has also invited my attention to page 31 of the petition which the recruitment rules regarding of Professors in which qualifications required for the Professors are mentioned and to page 33 regarding recruitment rules for Lecturers in which the qualifications required for the Lecturers are mentioned. He has also submitted that even the UGC pay scale for Universities and Colleges are different. He also

submitted that the qualification of a Professor is different than a Lecturer. He submitted that in Engineering Collectors and Arts, Science and Commerce colleges same subjects are taught and therefore equals are treated unequally.

4.2 The ld.counsel further submitted that the cadre of Professors in Government Arts, Science and Commerce colleges was always different and distinct from the cadre of Lecturers in the same colleges. The qualifications were different, those for the Professors being higher than those fori the Lecturers. The pay scales were always different, the Professors were getting higher pay scales than the Lecturers. The Professors were always enjoying higher status with higher responsibilities for the entire department. There was hierarchy in Government colleges the Professors being Heads of Departments and the Professors were required to discharge special duties and responsibilities. Thus the Professors were always distinct and superior to the Lecturers in all respects. Both cannot be treated on par for the purpose of pay scales. If both are in substance and reality unequal they cannot be treated equally. The Government's decision to prescribe the same scale of Rs.700-1600 to both the Professors and Lecturers amounts to ignoring the most vital and relevant difference between Professors and Lecturers and treating unequals equally. This clearly amounts to denial of equality before law and equal protection of the laws under Articles 14 and 16 of the Constitution of India.

Contention no.2

#. The petitioner Professors of the subjects like Physics, Chemistry ,Mathematics, English etc. in Government Arts, Science and Commerce colleges belong to the same class as the Professors of the same subjects (known as non technical subjects) in Engineering colleges in all respects. Subsequently the Professors in non technical subjects in Engineering colleges were offered pay scales of Rs. 1200-1900 while the petitioner Professors of the same subjects were offered Rs.700-1600.

5.1 The ld.counsel further submitted that the objectives of prescribing the pay scales for different classes of posts are (i) to attract the best talents (ii) to retain them in the same service (iii) to realise the objectives stated in Directive Principles of State Policy in Part IVG of the Constitution of India; (iv) to maintain v

vertical and horizontal parity.

5.2 The ld.counsel further submitted that the principal criteria laid down by the Supreme Court in various judgments for determining the pay scales of different posts are (i) educational qualifications; (ii) experienced; (iii) duties and responsibilities; (iv) the method of recruitment (v)the age of entry; (vi) history of the post; (vii) hierarchy both vertical and horizontal in the same cadre and across different cadres; (viii) promotion.

5.3 The ld.counsel further submitted that the petitioners were Professors of subjects like Physics, Chemistry, Mathematics, English etc. in Government Arts, Science and Commerce colleges and belong to the same class and stand on the same footing with the Professors of these very subjects (known as non technical subjects) in Government Engineering colleges and though they were equally treated the Government decided to create a distinction between the two in prescribing pay scales viz. prescribing Rs. 700-1600 to the petitioner Professors in Government arts, Science and Commerce colleges while prescribing Rs.1200-1900 to the Professors of the same subjects in Engineering colleges. Both the Professors were on the made footing and stand on the equal basis in terms of qualifications for the post, pay scales duties and responsibilities vertical and horizontal and yet they were treated unequally.

#. The ld.counsel further submitted that just as the petitioners are teaching Physics, Chemistry, Mathematics, English, Economics in Government Arts, Commerce and Science colleges, there are Professors teaching Physics, Chemistry, Mathematics, Economics, English (non technical subjects) in Government Engineering colleges. The teaching of these subjects in the Arts, Science and Commerce colleges is at a much more higher, deeper and more comprehensive level than the teaching of these subjects in Engineering colleges where these subjects are taught at elementary level. The ld.counsel further submitted that the qualifications at the relevant time for these posts are as under:

Professors of non technical subjects in Engineering colleges in Gujarat Education Service Class-I(Collegiate Branch). Appointment by promotion by direct selection

For direct selection the qualifications required are:

a) A Bachelor's degree in the First Class + a Doctorate with 2 years teaching experience in an affiliated college;

OR

b) A Master's degree in at least First Class + 2 years teaching experience;

OR

c) A Bachelor's degree in at least Second Class+ a Master's degree in pass class or a Bachelor's degree in pass class + Master's degree in second class + 7 years teaching experience of which at least 5 years must be at PG level

6.1 The qualifications for the posts of Professors of these subjects in Government Arts Commerce and Science colleges in Gujarat Education Service Class-I

The same as above.

6.2 The pay scales were as under:

	Class-III	Class-II	Class-I
ROP Scales 1962	250-470	245-725	370-1100
Sarela Pay scale 1.3.67	350-700	350-850	500-1250

6.3. Afterwards the Sarela pay scales were withdrawn and UGC pay scales were given with effect from 1.4.1966 as under:

6.4 For Senior and Junior Lecturers the pay scale was 300-600 and for Professors, the pay scales were 400-800 and 700-1100.

6.5 The ld.counsel further submitted that by Government Resolution dated 255.10.1977 the Government accepted the new pay scales known as UGC pay scales for Engineering colleges for technical and non technical subjects. As regards the non technical subjects the pay scales were as under:

1.	Professors, Associate Professsors,Reader (to be redesignated as Assistant Professors)	1200-1900
2.	Lecturers	700-1600
3.	Asstt.Lecturers	550-900
4.	Demonstrators	500-900

These pay scales were to be given effect from 1.1.1973.

6.6 The ld.counsel further submitted that as against this, the professors of these very subjects in Government Arts, Science and Commerce colleges along with Lecturers were placed in the pay scale of Rs.700-1600 pay equals which are given to Lecturers of non technical subjects in Engineering colleges.

6.7. The ld.counsel further submitted that under the new pay scales, qualifications for the posts of Assistant Professors in non technical subjects (for future recruit) are (i) A Doctorate's degree of research work of an equally high standard' and (ii) consistently good academic record with First or high Second class (in the Gujarat point scale) Master's degree in a relevant subject or an equivalent degree of a foreign university.

6.8. The ld.counsel further submitted that the qualifications fori the posts of Lecturers in non technical subjects (for future recruit) are (i) a consistently good academic record with First or high second class (B+) a Master's degree in a relevant subject or an equivalent degree of a foreign University; (ii) M. Phil degree or a recognised degree beyond Master's level or a published work indicating capacity for independent research work.

#. In view of the aforesaid facts and circumstances learned advocate for the petitioners submitted that though the petitioners were appointed as Professors in various subjects such as Physics, Chemistry, English Economics etc. in Government Arts, Science and Commerce Colleges with higher qualifications prescribed for Professor's post, they are treated at par with Lecturers of non technical subjects in Engineering colleges appointed with far lesser qualifications and were denied equal treatment with professors of non technical subjects in Engineering colleges appointed as Professors and

possessing the same qualifications. The ld.counsel further submitted that the latest pay scales are known as Mehrotra pay scales effective from 1.1.1986 as under:

1. Principal (i) 4500-7300
(ii)3700-5700

2. Lecturers (i) 3700-5700
(ii)2200-4000

The ld. counsel has also invited my attention to the statement showing the latest position of the petitioners in this behalf.

#. The learned counsel for the petitioners has relied upon a judgment of this court (Coram: S.L.Talati-J as then he was) in Special Civil Application No. 551 of 1978 decided on 8.7.1983, a copy of which has been annexed to the petition at Annexure I on page 98 onwards. On page 104 the learned single Judge has observed as under:

"Now no affidavit in reply is filed. It is also required to be mentioned that in Surat Engineering College there is no distinction in pay scale of professors who teach technical or non technical subjects. Therefore the grievance of the petitioners is that there is discrimination in the college run by Saurashtra and Gujarat are as affiliated to respective universities and the colleges are run by the Government on one hand and Surat Engineering College which is affiliated to South Gujarat University run by the Central Government. In Baroda University also in Baroda Engineering College the professors teaching technical and non technical subjects are given same pay scales as given in Surat Engineering College.

8.1 Constitution of India does not allow discrimination. It only allows discrimination to a certain extent. may be law adopted by the parliament. Unless the discrimination is permissible under article 16 by an appropriate law such alone such discrimination which is permissible to be made. Even discrimination cannot be made which is not permissible under article 16 of the Constitution of India. What is required to be shown is that this type of discrimination is permissible under art. 16

Thereafter it is required to be shown that the permissible discrimination is made in accordance with law, rule or established practice by an appropriate classification. Unless that is done discrimination cannot be permitted.

8.2 The crux of the matter is that whether the Government by its own resolution prescribed different pay scales for Professors teaching particulars subjects in colleges affiliated to one University and Professor teaching the same subjects for the same course in another college affiliated to different Universities in the same State. If that cannot be made it cannot have made what is taught in Surat Engineering College is not different from what is taught in L.D.Engineering College, Lakhdhiraji College of Engineering, Morvi. By becoming a graduate or post graduate in Surat Engineering College a student does not acquire better qualifications or a student of B.E. or M.E in L.D.Engineering College or Lakhedhiraji College of Engineering, Morvi. Therefore, the students staying in Surat, Morvi or Ahmedabad learn in the same fashion and ultimately acquire the same qualifications. The discrimination cannot be done. This applies to Baroda also. Further in the same colleges engineering subjects cannot be divorced from physics, chemistry or mathematics. Professors teaching physics, chemistry or mathematics in Engineering College have to teach these subjects bearing in mind that the students are being prepared not for those particular subjects alone but ultimately for engineering subjects and, therefore those who angle or teaching is different, he has to be taught physics mathematics or chemistry in such a way that he can acquire knowledge in engineering subjects and understand when they attend lectures in engineering subjects as well. Now therefore, these subjects to engineers subjects are supplementary and complimentary to one other and one cannot be divorced from the other. Now, therefore, if these subjects are so interlinked though in a particular away their pay scales could never be different. This what the Desai Pay Commission thought and this what Sen Committee thought. This is what Government of Gujarat thought in regard to Surat and Baroda colleges. How can they say that this is in different way from other colleges in the same

state. It appears that they have thought not from academic angle at all but from the angle of grant. If they consider an engineering college to be a luxury which they cannot afford they may have one college or more that is their choice. It is in accordance with the finance of the State and the colleges are required to be opened looking to the financial conditions of the State and the necessities of the State in regard to the industries which are functioning in the State."

8.3 Ultimately on page 109 the learned single Judge has held as under:

"...If they prescribe the pay scales which are less courts have nothing to do. It is for the professors in the State to raise the dispute and settle the same But when discrimination starts the courts have to interfere and that is why the writ petitions are filed. The State has been chosen to have engineering colleges in different parts of the State now they cannot treat the professors in a different away in different colleges or in a different way in some colleges."

#. Ultimately the court allowed the petition and the court gave the following directions:(on page 109)

" The petitioners succeed and the respondents are directed to refix the salaries of all the five petitioners and give them the same pay scales as given to other professors who are teaching engineering(technical) subjects in the same colleges. After fixation difference in reply salaries is required to be worked out and they are to be given pay scale of Rs.1500-2500 from the date on which they have given those pay scales to the other professors of Engineering subjects (technical) in the same college..."

##. Learned advocate for the petitioners submitted that there are two types of colleges viz. Engineering colleges and other Arts,Sccience and Commerce Colleges. In Engineering Colleges subject of physics is being taught but the level of teaching the subject of physics is different in Arts & Science Colleges. Similarly he contended that if there are technical subjects and if the same are taught in technical colleges the level is different from other colleges. The contents, level and depth are different.

##. As regards the contention regard the objective of prescribing pay scales he submitted that the objective of prescribing pay scales he submitted that the objective of pay scales is to attract the best talents and after appointing them to preserve them in service and also to maintain horizontal and vertical qualifications. He also submitted that for giving pay scales, educational qualifications, experience, duties and responsibilities , historical back ground of the post and hierarchy both vertical and horizontal are required to be considered. He submitted that the Professors in the Arts, Science and Commerce Colleges cannot be discriminated from the Professors of Engineering Colleges. He also submitted that equity has to be maintained in this regard.

11.1 In support of the same learned advocate for the petitioner has relied upon a judgment of this court in the case of C.G.Patel & ors. vs State of Gujarat reported in 1992(2) GLR 1119. In this case the case was considering the case of Assistant Lecturers in Government Colleges and Government Polytechnics run by Government of Gujarat. In para 18 of this judgment it has been held as under:

"That there could justifiably be different pay scales for persons holding different qualifications is a proposition which has been enunciated in Mews Ram Kanojia vs. All India Institute of Medical Sciences & ors. AIR 1989 SC 1256. In that decision it has been held that the doctrine of 'equal pay for equal work' is not expressly declared a fundamental right under the Constitution. But Art. 39(d) read with Arts 14 and 16 of the Constitution declares the constitutional goal enjoining the State not to deny any person equality before law in matters relating to employment including the scales of pay . Article 39(d) read with Arts. 14 and 16 of the Constitution enjoins the State that where all things are equal and person holding identical posts, performing identical and similar duties under the same employer should not be treated differently in the matter of their pay (emphasis supplied). The doctrine of 'equal pay for equal work' is not abstract one, it is open to the State to prescribe different scales of pay for different posts having regard to educational qualifications, duties and responsibilities of the post. The principle of ' equal pay for equal work' is applicable when employees holding the

same rank perform similar functions and discharge similar duties and responsibilities, are treated differently (Emphasis supplied). The application of doctrine would arise where employees are equal in every respect but they are denied equality in matters relating to the scale of pay. While considering the question of application of principle of ' equal pay for equal work' it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved efficiency in the administration, the State would be justified in prescribing different pay scales but if the classification does not stand the test of reasonable nexus and classification is founded on unreal and unreasonable basis it would be violative of Arts. 14 and 16 of the Constitution Equality must be among the equals, unequals cannot claim equality. Even if the duties and functions are of similar nature but if the educational qualifications prescribed for the two posts are different and there is difference ion measure of responsibilities the principle of ' Equal Pay for Equal Work' would not apply. Different treatment to persons belonging to the same class is a permissible classification on the basis of educational qualifications.

Thus this judgment in the case of Mewa Ram Kanojia also postulates that there can be different pay scales for persons having different educational qualifications, even though they otherwise might be belonging to the same class. This judgment also clearly postulates that there can be different pay scales dependent upon the measure of responsibilities."

##. Again in paras 19 and 23 this Court has observed as under:

"19. In the instant case as indicated hereinabove it could not be disputed that though the petitioners might be teaching non technical subjects like Physics, Chemistry, Mathematics, English etc, the level of teaching is certainly lower than the level of teaching of those very subjects in Arts, Science, Commerce etc. Colleges and certainly the level of teaching by

the petitioners of their respective subjects can have no equation with the level of teaching of the technical subjects in Engineering Colleges and Polytechnic Institution. In the affidavit in reply it has clearly been made out that the teaching of technical subjects to the students in Engineering Colleges and Polytechnics is of a very high and intensive level for, those technical subjects are real subjects which the Engineers or the Technicians to be, have to to learn. Of course, for the better learning of those subjects they may have incidently to learn the basis of Physics, Chemistry, English etc. But there could be no denying that those students do not have to learn Physics, Chemistry, Mathematics etc. in such a depth or to such an extent as they have to learn the subjects like Engineering mechanics and other technical subjects. Therefore, the claim of equality by the petitioners with the teachers teaching technical subjects in Engineering Colleges and Polytechnics is wholly untenable. Their claim for equality with teachers teaching similar subjects in Arts, Science, Commerce etc. Colleges also cannot be accepted for, whereas the petitioners have to teach their subjects to the students of Engineering Colleges and Polytechnic Institutions only upto the level below the degree level, the teachers teaching similar subjects in Arts, Science, Commerce etc. Colleges have to teach those subjects upto graduation or degree level. Therefore, there is difference in the level of teaching. There is also difference in the intensity of teaching. In that view of the matter there is qualitative difference between the work done by the petitioners and that done by the persons with whom they claim equality. That that qualitative difference can justify difference in pay scales without in any manner violating the guarantee of equality under Arts. 14 and 16 of the Constitution. Here it is demonstrated that the petitioners have to reach their subjects upto the level which is lower than the level upto which the persons with whom the petitioners claim equality, teach their subjects. The petitioners are therefore, equals as compared to the persons with whom they claim equality. The constitutional guarantee cannot be extended to the granting of equality to the petitioners with the persons with whom they are not equals.

"23.. In the case before me though the petitioners might be Assistant Lecturers teaching non technical subjects they cannot claim parity with the Assistant Lecturers teaching technical subjects merely on the ground that both are Assistant Lecturers. The petitioners' claim for parity of pay with the teachers teaching similar subjects in Arts,Commerce etc. Colleges, has in my opinion, no basis, as indicated hereinabove."

##. Ms. Nandini Joshi learned AGP has relied upon the affidavit in reply filed by K.M.Makwana Under Secretary to Government of Gujarat, Education Department, Sachivalaya, Gandhinagar. This affidavit is dated 28.2.1994. In the affidavit the stand of the Government is that the petitioners are similarly situated with the Associate Professors teaching non technical subject in Engineering college. In Engineering Colleges Associate Professors have to teach these subjects bearing in mind that the students are being prepared not for those particular subject alone alone but ultimately for engineering subject and therefore the whole angle of teaching is different. They have to teach physics, mathematics or chemistry in such a way that one can acquire knowledge in engineering subject as well. The applicability of the subject like mathematics, physics etc. in engineering field is required to be taught by the teachers in engineering colleges. As for example in Engineering Colleges in physics paper applied mechanic is taught as one subject. In physics paper subject of Accoustics, nuclear physics and nuclear technology reactor physics are also taught as a part of physics subject. In mathematics what is important is the application of mathematics to engineering for example vibration electrical circuit head transfer problems are also required to be taught etc. It was further submitted that while in Government Arts Commerce, Science and Law Colleges the lecturers have to teach Gujarati,Hindi, Sanskrit, Mathematics etc. subjects bearing in mind that the students are being prepared for non professional courses i.e. Arts Commerce and Science etc. The most of the petitioners are in subjects of humanities like Gujarati,Hindi,Histrory, Sociology and Psychology which are not the subject taught in Engineering colleges. It is further stated that there exist classes of teachers in Government non technical colleges viz. (i) Principal and Professor in Class-I, (ii) Lecturer in Class-II and (iii) Tutor and Demonstrator in Class-III but with effect from 1.1.73 the professors were classified as class-I but they

are nomenclatured as lecturer and given the pay scale of lecturer is Rs. 700-1600 with effect from 1.1.1973. It is also further stated that relying upon the Government Resolution dated 7.7.1979 the Government has decided that the professors who were promoted earlier to Sen Pay Commission may be called lecturer but may be classified as Class I for the purpose of status only but they shall carry pay scales that of lecturer i.e. Rs.700-1600.

13.1 It is also stated in the affidavit in reply that the duties and responsibilities listed in petition are not higher or do not require much intelligence compared to their colleagues in Class_II i.e. lecturer. The main job of teachers is to teach subjects and taking into account the same duties and responsibilities UGC had recommended for same pay scale i.e. 700-1600. It is not true that the petitioners are writing the confidential report of lecturer. The Principal of the College writes Confidential Report of all lecturers. Government orders in the matter are attached therewith. It is further stated in the affidavit in reply that the pay scale of the Government in Arts,Commerce,Science and Law colleges are recommended by Government of India. Government of India had recommended the pay scale of Rs. 700-1600 for the lecturers on all India basis. Moreover there are other non Government Arts Commerce,Science and Law Colleges in the State,. These lecturers also carry the same pay scale which the Government College lecturers are drawing. The Government of Gujarat pay 100% grant on pay packet in non Government colleges w.e.f. 1.4.1977. If the demand of teachers in Government colleges are accepted, it is natural that the same benefit would be required to be extended to the lecturers in non Government colleges and this would result in financial burden of crores of rupees on State Recurring Expenditure. 80% Central assistance was availed only upto 31.3.1979. Now Central assistance could be available. It was further stated that more over the Principal in Arts, Commerce, Science and Law colleges draw pay scale of Rs. 1200-1900(senior grade of Rs.1500-2500 for 15% of total strength of principal) If the demand is accepted by the Government the principal may also demand to revise the pay scale which would result into more financial burden to the Government. Government also has relied upon the judgment of this court rendered in SCA No. 551 of 1981 to which a reference is made by me in the earlier paras.

##. The learned Sr. Counsel for the petitioner in rejoinder submitted that the Government has tried to

justify the different pay scales for the Professors of non technical subjects in Engineering subjects and Professors of the same same in Arts,Science and Commerce Colleges on the ground that the teaching standards in Engineering colleges must have special bias towards towards Engineering subjects and are distinct from the teaching standards required in Government Arts Science and Commerce colleges. For that purpose the learned counsel has referred to the judgment of this Court (Coram) S.L.Talati-J as he was then) dated 8.7.1983 rendered in SCA No.551 of 1978 which I have referred to earlier. In that petition also the Professors of non technical subjects in Engineering colleges were demanding the same pay scales as Professors of technical subjects in Engineering colleges. In the same case, the Government had not filed any affidavit trying to justify the different pay scales for the Professors of non technical subjects and professors of technical subjects in Engineering colleges. Moreover the history of the two posts was not also considered. It was also considered that in Surat, Vadodara and Saurashtra there is no difference in pay scales of both. Government of India also does not recognise any such distinction and therefore there was no reason why there should be any difference between the pay scale of two classes of Professors. There the argument of the Government was tough not supported by affidavit that the Professors of non technical subjects in Engineering colleges have to teach with a different angle as compared to the Professors of the made subjects in Government Arts, Science and Commerce colleges.

##. The learned Sr.Counsel for the petitioners submitted that the averments made by the Government in the affidavit in reply regarding the standard of teaching is completely contrary to and inconsistent with the Government's stand in the case of G.C.Patel & ors.(Supra) where the petitioners in that petition were demanding similar pay scale which was given to the Lecturers of Arts, Science and Commerce Colleges and ultimately the petition was dismissed.

My Conclusion

##. In my view the concept of equality and equal protection of laws guaranteed under Article 14 of the Constitution of India lies in independent,intelligent, social and economic justice in political democracy. In my earlier discussion I have shown the difference between the Professors and Lecturers and both are distinct and different qua their qualifications, experience and

working. In my view equally stated persons must be treated equally both in conferring privilege and in the liabilities imposed. The posts of Professors are class I whereas the posts of Lecturers are Class-II. Their recruitment rules are also different. In my view, the duties and responsibilities of Professors and Lecturers are also different. In my view the UGC pay scale for Universities and Colleges are also different. In my view therefore, equal treatment to unequals i.e.. both Professors and Lecturers is liable to be struck down and amounts to discrimination and as there is simultaneously passing of irrational relation to the object intended to be achieved by the liability and therefore and therefore granting of the similar pay scale by the UGC Government for Professors and Lecturers is also bad in law.

##. As regards the second contention of the petitioners, the same is based on the analogy that Professors of subjects like Physics, Chemistry, Mathematics, 'English etc. in Government Arts, Science and Commerce colleges and belong to the same class of Professors of the same subjects in technical subjects in Engineering Colleges in all respects. The Government has prescribed the pay scale of Rs.1200-1900 to the Professors of non technical subjects in Engineering Colleges while the Professors in the same subjects in Arts, Science and Commerce Colleges the Government has fixed the pay scale of Rs. 700-1600. I have considered the contentions of the learned counsel for the petitioners and also the contentions of the Government in this behalf. I have also considered the unreported judgment of this Court(Coram: S.L.Talati-J as then he was). It may be noted here that in the peculiar facts and circumstances of the case since the Government in that case did not file any affidavit in reply the matter was heard without substantive opposition of the Government; whereas in the judgment of this Court (Coram: K.G.Shah-=J as then he was) in the case of G.C.Patel & ors. vs. State of Gujarat (Supra), Government filed affidavit and contested the matter. In my view the judgment of Mr.Justice K.G.Shah supports the contention of the petitioners in this behalf. In my view there should be no discrimination between one person teaching the same subjects and another in the matter of working. Therefore, the position is the same . It must be based on the same valid principle which may not be irrational or discriminatory. In my view therefore, when the Government has treated both Professors and Lecturers who are not similarly situated equally, therefore, said action of the Government is liable to be quashed and set aside.

##. In my view, 'Discrimination' shortly speaking, means difference in treatment. The dictionary meaning of 'discriminate against' is "make an adverse distinction with regard to", 'distinguish unfavourably from others'. In this case the petitioners are able to prove that there is discrimination between Professors in Arts, Science and Commerce Colleges who are teaching subjects like Physics, Chemistry and others and Professors who are teaching the same subjects in Engineering Colleges in this behalf.

##. In my view as regards the Professors in Arts, Commerce and Science Colleges have to teach the subjects like Physics, Chemistry etc. with more elaboration upto graduation level. Therefore, their teaching is is also intensive and comprehensive and therefore, the Professors in Arts, Science and Commerce Colleges cannot be treated differently than the professors of Engineering Colleges who are teaching the same subjects. Therefore, the action of treating the petitioners differently in the matter of pay scales is clearly arbitrary, unconstitutional and violative of Articles 14 and 16 of the Constitution of India.

##. In my view the classification of both Professors and Lecturers is not founded on intelligible differentia which describes persons or things that are grouped together or left out and the same have no rational relationship to the object sought to the achieved by the University in this behalf. In my view the classification of both these Professors treating differently results into inequality. It is not be possible for this court to hold that these two groups of Professors belong to two different categories in this behalf. In my view the classification between the two groups of Professors is palpably arbitrary. In my view there is no real or substantial difference between the two classes and therefore, the contentions of the learned counsel for the petitioners is required to be accepted and the contention of the Government is liable to be rejected.

##. I therefore, quash and set aside the order dated 16.3.1983 by which the Government denied the benefit of pay scale of Rs.1200-1900 to the petitioners in this behalf. I further direct the respondent Government to extent to the petitioners the pay scale of Rs. 1200-1900 from 1.1.73 and to order fixation of salary of the petitioners in the said pay scales and further directing the respondents to pay to the petitioners arrears of difference in salary on that basis and further directing the respondents to consider the petitioners for future

revisions as if the petitioners had been placed in the above pay scale and to grant to the petitioners properly revised pay scale even in future on that basis with all consequential benefits. I further direct the respondents to extent to the petitioners the pay scale of Rs. 1500-2500 from 1.1.1973 and to order fixation of the salary of the petitioners in the said pay scale and further directing the respondents to pay to the petitioners arrears of difference in salary on that basis and further directing the respondents to consider the petitioners for future revision as if the petitioners had been placed in the above pay scale and to grant to the petitioners properly revised pay scales in future on par with Professors of non technical subjects in Engineering Colleges with all consequential benefits.

##. I further restrain the respondents from downgrading in any manner the status of the petitioners and from depriving them of their powers and responsibilities as enjoyed in the past and from affecting these powers and responsibilities in any manner whatsoever. Accordingly the petition is allowed. Rule is made absolute. No order as to costs.

(K.M.Mehta.J)

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